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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 4465 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No
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JOYALBHAI NILESHBHAI SHAH & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR. TEJAS BAROT, SENIOR ADVOCATE WITH MR DHAVAL M
BAROT(2723) for the Applicant(s) No. 1,2,3,4,5
NOTICE SERVED BY DS for the Respondent(s) No. 2
MR. K. M. ANTANI, APP for the Respondent(s) No. 1
=====**CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL****Date : 14/07/2026****ORAL JUDGMENT**

1. The petitioners before this Court have invoked the jurisdiction under Section 482 of the Code of Criminal Procedure 1973, for quashing and setting aside the proceedings of Criminal Case No. 17498 of 2021, pending before the Court of learned 8th Additional Civil Judge and Judicial Magistrate First Class at Mirzapur, Ahmedabad, arising out of FIR being II-C.R. No.11191001210292 of 2021, lodged before the Anandnagar Police Station, Ahmedabad, for the offences punishable under Sections 4 and 5 of the Gujarat Prevention of

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Gambling Act, 1887 (hereinafter referred as “ the Gambling Act”).

2. Facts bereft of unnecessary details in the FIR are to the effect that the informant in due course of discharging his duties alongwith other police officers received anonymous tip that certain persons were gambling at House No.83 at Shaligram-2. The first informant in furtherance to his duties carried out raid at the said location and upon entering the said location, allegedly found a table in the dining room around which five individuals were seated and upon the table, the informant saw playing cards and coins of varying colors, and thus, the FIR came to be lodged under the provisions of Section 4 and 5 of the Gambling Act.

2.1. It is this FIR and the proceedings initiated thereupon which are challenged by way of the present petition.

3. Rule. Learned Additional Public Prosecutor waives service for respondent – State.

4. Learned Senior Advocate Mr. Tejas M. Barot with learned Advocate Mr. Dhaval Barot for the petitioners would submit that no ingredients set out under Section 4 of the Gambling Act, are met out from the *prima facie* reading of the

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FIR, and that the petitioners have been wrongly implicated. Learned Senior Advocate would further submit that the house which was raided that of petitioner No.1 does not fall within the four corners of “common gaming house” and thus, the requirement of the Act under Section 4 are not fulfilled, and there is not an iota of evidence that by way of charge or that the house was used for the profit or gain from such gaming, and not an iota of evidence is discernible from the papers of the chargesheet or the FIR, and thus, has prayed to quash the present FIR and consequential proceedings.

4.2. Learned Senior Advocate would further submit that even while entering and searching the premises, the raiding party had no reasons to suspect that the place was used as a “common gaming house”, and that while issuing special warrant by the competent authority had also not arrived at objective satisfaction that the competent authority had reasons to suspect that the house under question was used as a “common gaming house”. Thus, it is argued that even while issuing special search warrant, no inquiry was undertaken to arrive at a conclusion that good grounds to suspect that the house under question was used as a “common gaming house” was arrived at by the competent authority while issuing the search warrant, which has caused serious prejudice to the petitioners herein, and has thus, argued to allow the present

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petition.

4.3. To substantiate his arguments, learned Senior Advocate would rely upon the judgment in the case of **Nimmagada Raghavalu and others**, reported in **1952 SSC OnLine Mad 87**, wherein it is held as under:

“Gambling is not by itself an offence and it becomes only when it takes place in common gaming house or a public place, with the latter of which we are not concerned here. In order to make out the offence three things must occur. First all of the gambling must be in a common gaming house. “Common Gaming House” has been defined as meaning any house in which cards are kept or used for the profit or gain of the person owning, occupying using or keeping such house whether by way of charge for the use of instruments of gaming or of the house. The mere fact occasionally people used to play cards in a house and perhaps for money does not necessarily make it a common gaming house.....

Secondly under the definition of the common gaming house as defined in S.3 of the Madras Gaming Act the element of profit or gain is an essential ingredient and when this is negatived by the evidence in this case there is nothing to warrant a conviction of the persons found in such a house.....”

5. *Per contra*, learned Additional Public Prosecutor Mr. K. M. Antani would submit that whether the house was used as a

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“common gaming house” or not is a question of evidence, and when the competent authority has issued warrant under Section 6 to enter and search the premises, it cannot be said that there were no good grounds to suspect that the house used by the petitioners herein was not used as a “common gaming house”, more particularly, when the petitioners were found with coins of different colors and playing cards, which *prima facie* were for the purpose of gambling and whether the petitioner No.1 whose house was raided was used for the profit or gain of the person occupying by way of charge for the use of such house is a question of evidence, and cannot be decided at the threshold, and thus, argued to reject the present petition.

6. I have heard learned Advocates for the respective parties.

7. At the outset, the definition with regards to common gaming house under the Gambling Act is concerned, the same is reproduced here for convenience:

“In this Act, ‘common gaming-house’ means -

(i) in the case gaming -

(a) on the market price of cotton, opium or other commodity or on the digits of the number used in stating such price, or

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(b) on the amount of variation in the market price of any such commodity or on the digits of the number used in stating the amount of such variation, or

(c) on the market price of any stock or share or on the digits of the number used in stating such price, or

(d) on the occurrence or non-occurrence of rain or other natural event, or

(e) on the quantity of rainfall or on the digits of the number used in stating such quantity, or

(f) on the pictures, digits or figures of one or more playing cards or other documents or objects bearing numbers, or on the total of such digits or figures, or on the basis of the occurrence or non-occurrence of any uncertain future event or on the result of any draw, or on the basis of the sequence or any permutation or combination of such pictures, digits, figures, numbers, events or draws;

any house, room or place whatsoever in which such gaming takes place or in which instruments of gaming are kept or used for such gaming;

(ii) in the case of any other form of gaming, any house, room or place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owing, occupying, using or keeping such house, room or place by way of charge for the use of such

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house, room or place or instrument or otherwise howsoever.”

8. If the FIR is taken into consideration, it is stated that *“Today, I alongwith Police Constable Kamleshkumar Somabhai, Buckle Number 8098, and O.S.D. driver Mukeshbhai Maganbhai, were performing duty in van near Anandnagar, at that time, from the police control of Anandnagar Police Station, telephonic message was received on 18th June 2018, at 23:52 hours that Case No.90396, Shaligram-2, 8th floor, House No.83, Prahladnagar, Satellite, gambling is taking place. And after making aware the Police Inspector of this message, and on the instruction of Police Inspector, and to conduct the raid, warrant was issued from Deputy Police Commissioner, Zone-7, Ahmedabad, left from the police station at 00:15 hours in different government vehicles alongwith the aforesaid staff members and Police Constable Harpalsinh Prabhatsinh, Buckle No.5942 and Police Constable Mahendrasinh Ghanshyamsinh, Buckle No.8287, alongwith two Punks at the alleged place, and made them aware with regards to the message, and explained them with regards to, to be witnesses to the said Panchnama, to which they agreed, went to the place in lift at 8th floor.....”*

9. Thus, what can be seen from the FIR is that a telephonic message was received that gambling is taking place at 8th floor, House No.83, Shaligram-2, at Prahladnagar, Satellite. From the entire papers of the charge-sheet which are placed before this Court for perusal, there is not an iota of evidence that the house which was raided was used for the profit or gain of the person owning, occupying, using or keeping such house by way of

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charge for the use of instrument of gaming or of the house, and thus, the fact that the petitioners herein were playing cards in a house, perhaps for money, does not necessarily make it a common gaming house. Thus, the element of profit or gain being an essential ingredient, which does not surface on record either from the entire papers of the chargesheet nor ever is there an iota of allegations in the FIR itself, except for stating that the house is used for gambling, it cannot be said that the provisions of Section 4 are attracted, inasmuch as does not fall within the four corners of gambling house, for which the provisions of Section 4 and 5 would ultimate attract.

10. As far as issuing special search warrant is concerned, what has been provided in the proviso to Section 6 the Gambling Act is that no officer shall be authorized by special warrant unless the authority competent to so authorize under Sub-section (1) is satisfied, upon making such inquiry as he may think necessary, that there are good grounds to suspect the said house, room or place to be used as a common gaming house. Thus, even before authorizing by a special warrant, the competent authority has to make inquiry as he may think necessary before issuance of such special warrant that the house was used as a common gaming house.

11. When the FIR itself does not states that the house was

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used as a “common gaming house” or that the house was used where instruments of gaming are kept for profit or gain or by way of charge for the use of such house. Under such circumstances, the provisions of the Gambling Act, more particularly, that of Sections 4 and 5, cannot be said to be attracted and it clearly transpires that the competent authority before issuing such special warrant had undertaken any such inquiry, since the telephonic message that the place was used for gambling was received on 23:52 hours, and left the police station after receiving warrant from the Deputy Commissioner of Police, Zone-7, Ahmedabad City, at 00:15 hours. That is merely within 23 minutes of the receiving of the telephonic message would reflect that the inquiry was perfunctory in nature or that the competent authority did not thought it fit to look into the contents of the information that there are no allegations whatsoever attracting the provisions of the “common gaming house” as defined under Section 3 of the Gambling Act.

12. Thus, there being no iota of evidence that the house of the petitioner No.1 was a “common gaming house” and mere playing cards and loose coins were found and that some money was also found in the pocket of the petitioners will not necessarily imply that they were gaming in a “common gaming house”. The FIR merely states that the gambling was going on

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in the 8th floor of house No.83 in Shaligram-2, and this does not necessarily mean that the house was being used as a “common gaming house”, nor does the FIR in the vernacular language uses the word “Jugarkhana” the expression of common gaming house used in the vernacular language being missing. Under the circumstances, the presumption that the players were present in the house with cards and coins and cash found from their pockets alone cannot be a legitimate ground to draw an inference that petitioner No.1 is deriving from the rest of the petitioners, profit or gain from the use of his house and the cards and/or coins.

13. Thus, even while issuing warrant under Section 6 of the Act the competent authority must be careful and confine himself exactly within the limits which the Act lays down since overstepping the line would directly become an instrument of persecution, though it is left to the discretion of the competent authority, such discretion must be used with utmost care since the penal consequences under Section 6 entail. Thus, the only information which was received was that some persons were gambling in a private apartment. Because even if the petitioners were gaming public gambling in a private apartment, an FIR being silent on the aspect of “common gaming house”, it cannot constitute an offence.

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14. Under the circumstances, this Court is of the view that the petition deserves to allow and the same is allowed accordingly. The impugned FIR being II-C.R. No.11191001210292 of 2021, lodged before the Anandnagar Police Station, Ahmedabad, and the consequential proceedings arising out of the said FIR, are quashed and set aside qua the present petitioners..

15. Rule is made absolute to the aforesaid extent. Direct service is permitted.

NITIN MAKWANA

(P. M. RAVAL, J)